

**CALIFORNIA INSTITUTE OF TECHNOLOGY  
JET PROPULSION LABORATORY  
GENERAL PROVISIONS PART III -  
TIME-AND-MATERIAL FOR CONSTRUCTION CONTRACT**

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*GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL*

## ARTICLE GP-81. DAVIS-BACON ACT

(This Article applies if the amount of the Contract is in excess of \$2,000 for construction within the United States.)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this Article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the Article entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this Article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (1) The Institute shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Institute shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
- (A) Except with respect to helpers, as defined in FAR 22.401, the work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (B) The classification is utilized in the area by the construction industry.
  - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (D) With respect to helpers, such a classification prevails in the area in which the work is performed.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Institute agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Institute to the Contracting Officer for transmittal to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Institute do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Institute shall submit the question to the Contracting Officer, who shall refer for determination the questions, including the views of all interested parties, to the Administrator of the Wage and Hour Division, through the Industrial Relations Office for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this Article shall be paid to all workers performing in the classification under this Contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **ARTICLE GP-82. APPRENTICES AND TRAINEES**

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training

Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (c) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this Article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **ARTICLE GP-83. PAYROLLS AND BASIC RECORDS**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the Article entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Institute. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this Article. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005- 00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
  - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this Article entitled "Payrolls and Basic Records" and that such information is correct and complete;
  - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this Article.

- (4) The falsification of any of the certifications in this Article may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this Article available for inspection, copying, or transcription by the Institute, the Contracting Officer, or the Department of Labor or their authorized representatives. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Institute may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **ARTICLE GP-84. COMPLIANCE WITH COPELAND ACT REQUIREMENTS**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

#### **ARTICLE GP-85. WITHHOLDING OF FUNDS**

The Institute shall, upon its own action or upon written request of the Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other contract with the same Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Institute may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### **ARTICLE GP-86. SUBCONTRACTS (LABOR STANDARDS)**

- (a) The Contractor or subcontractor shall insert in any subcontracts the Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other Articles as the Institute may by appropriate instructions require, and also a clause requiring the subcontractors to include these Articles in any lower-tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the Contract Articles cited above.
- (b) (1) Within 14 days after award of the Contract, the Contractor shall deliver to JPL a completed "Incorporation of Labor Standards Provisions," form JPL 3557, for each subcontract, including the subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract, the Contractor shall deliver to JPL an updated completed form JPL 3557 for such additional subcontract.

#### **ARTICLE GP-87. CONTRACT TERMINATION - DEBARMENT**

A breach of the Contract Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Regulations," or "Certification of Eligibility," may be grounds for termination of the Contract, and for debarment as a contractor as provided in 29 CFR 5.12.

#### **ARTICLE GP-88. DISPUTES CONCERNING LABOR STANDARDS**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Disputes arising out of the labor standards provisions of this Contract shall be resolved in accordance with those procedures. Disputes within the meaning of this Article include disputes between the Contractor (or any of its subcontractors) and the Institute, the National Aeronautics and Space Administration, the U.S. Department of Labor, or the employees or their representatives.

#### **ARTICLE GP-89. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are hereby incorporated by reference in this Contract.

#### **ARTICLE GP-90. CERTIFICATION OF ELIGIBILITY**

- (a) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **ARTICLE GP-91. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION**

(The provisions of this Article shall be applicable only if the amount of this Contract exceeds \$10,000.)

##### **(a) Definitions.**

- (1) "Covered area," as used in this Article, means the geographical area described in the solicitation for this Contract.
- (2) "Director," as used in this Article, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- (3) "Employer identification number," as used in this Article, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) "Minority," as used in this Article, means:
  - (A) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
  - (B) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  - (C) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
  - (D) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this Article and the Notice containing the goals for minority and female participation stated in the solicitation for this Contract.

- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the "Equal Opportunity" Article, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good- faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this Article. The goals stated in the solicitation for this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this Article, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this Article shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
  - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
  - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off- the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
  - (4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.



- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
- (6) Disseminate the Contractor's equal employment policy by:
  - (A) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its Contract obligations;
  - (B) Including the policy in any policy manual and in collective bargaining agreements;
  - (C) Publicizing the policy in the company newspaper, annual report, etc.;
  - (D) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
  - (E) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after- school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this Contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.



- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor:
- (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The Contractor shall carry out such sanctions and penalties for violation of this Article and of the "Equal Opportunity" Article, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this Article and Executive Order 11246, as amended.
- (m) The Contractor in fulfilling its obligations under this Article shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this Article, the Director shall take action as prescribed in 41 CFR 60-4.8.
- (n) The Contractor shall designate a responsible official to:
- (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
  - (2) Submit reports as may be required by the Government; and

- (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **ARTICLE GP-92. BUY AMERICAN ACT - CONSTRUCTION MATERIALS**

(The Article entitled "Buy American Act - Supplies" is deleted, and this Article is substituted therefor.)

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.
- (b) Definitions.
  - (1) "Components," as used in this Article, means those articles, materials, and supplies incorporated directly into construction materials.
  - (2) "Construction material," as used in this Article, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.
  - (3) "Domestic construction material," as used in this Article, means (i) an unmanufactured construction material mined or produced in the United States, or (ii) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to FAR subparagraph 25.202(a)(3), and any corresponding implementing or supplementing provisions in the NSF, shall be treated as domestic.
- (c) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this Contract, except for foreign construction materials, if any, listed in this Contract.

#### **ARTICLE GP-93. MATERIAL AND WORKMANSHIP**

(The Article entitled "New Material" is deleted, and this Article is substitute therefor.)

- (a) All equipment, material, and articles incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of JPL, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

- (b) The Contractor shall obtain JPL's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to JPL the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by JPL, the Contractor shall also obtain JPL's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) All work under this Contract shall be performed in a skillful and workmanlike manner. JPL may require, in writing, that the Contractor remove from the work any employee JPL deems incompetent, careless, or otherwise objectionable.

#### **ARTICLE GP-94. SUPERINTENDENCE BY THE CONTRACTOR**

At all times during performance of this Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent or foreman who is satisfactory to JPL and has authority to act for the Contractor. The Contractor shall submit the name of its representative to JPL prior to commencement of site work.

#### **ARTICLE GP-95. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give JPL access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to JPL, which shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. JPL shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Whenever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of JPL is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" JPL, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (d) Shop drawings or as-built drawings shall be submitted in accordance with specifications, special conditions or other requirements under this Contract.
- (e) If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Contract requirements.
- (f) This Article shall be included in all subcontracts at any tier.

#### **ARTICLE GP-96. PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS**

- (a) The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workers, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by JPL.
- (b) The Contractor shall protect from damage all existing structures, improvements or utilities, the location of which is made known to it, within or outside the working area. Such protection shall include both the exterior and interior and the finish thereof and shall be performed by adequately covering or, with the approval of JPL, by temporary removal. Any damage to such facilities resulting from the Contractor's failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the work shall be promptly repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. If the Contractor fails or refuses to repair any such damage promptly, JPL may have the necessary work performed and charge the cost thereof to the Contractor. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled.
- (c) The Contractor shall at all times protect and preserve all work in progress, including, but not limited to, work performed, materials, supplies and equipment of every description (including property which may be Government-owned). The protection must be substantial and so placed as to be easily removed for inspection or to facilitate the progress of other work. All reasonable requests of JPL to enclose or specifically protect such property shall be complied with. If, as determined by JPL, materials, equipment, supplies and work performed are not adequately protected by the Contractor, such property may be protected by JPL and the cost thereof may be charged to the Contractor or deducted from any payment due it.

#### **ARTICLE GP-97. CLEANING UP**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to JPL. Unless otherwise stated in this Contract, the time stated for completion of the work shall include cleaning-up time.

#### **ARTICLE GP-98. SIGNS AND ADVERTISEMENTS**

No signs or advertisements will be allowed on the site unless prior written approval is obtained from JPL.

#### **ARTICLE GP-99. TEMPORARY UTILITIES AND UTILITY TIE-INS**

- (a) Water. All reasonably required amounts of water will be made available to the Contractor by JPL from existing water system outlets and supplies. Any pumping facilities, temporary connections or piping required to transmit the water shall be furnished by the Contractor, subject to the approval of JPL, and shall be removed in a satisfactory manner, at the Contractor's expense, when the job is completed.
- (b) Electricity.
  - (1) All reasonable electric current required by the Contractor shall be furnished by JPL. All temporary connections for electricity shall be subject to the approval of JPL.
  - (2) All temporary lines will be furnished, installed, connected and maintained by the Contractor in a workmanlike manner satisfactory to JPL and shall be removed by the Contractor in like manner at its expense prior to completion of the construction.
  - (3) The Contractor shall furnish engine-driven welders for required welding power.

- (c) Telephone Service. Unless otherwise provided in this Contract, telephone service shall be provided by the Contractor, or, where available, JPL pay telephones may be used.
- (d) Utility Tie-Ins.
  - (1) All tie-ins, modifications, or moving of JPL utilities such as air, power, fire sprinkler systems, water, air-conditioning systems, etc., must be scheduled through JPL and shall be done on Saturdays or Sundays, if required, at no additional cost to JPL.
  - (2) Unless otherwise specified in this Contract, the Contractor shall submit schedules to JPL at least 10 calendar days in advance of any building utility outages and off-hour work, and JPL will inform the Contractor within seven calendar days of receipt of notification of approval or disapproval of such schedules.
- (e) Water and Utility Usage. The Contractor shall provide continuous surveillance of water flow or other utility usage to prevent waste or damage to JPL property.

#### **ARTICLE GP-100. WORKING HOURS AND SPECIAL WORK DAYS**

- (a) The Contract price is based on working whatever schedule may be necessary to complete the work within the prescribed time.
- (b) No work shall be performed on Saturdays, Sundays, or holidays recognized by JPL without prior notification to and approval by JPL, which notification shall be not less than 48 hours.

#### **ARTICLE GP-101. BADGES AND PASSES**

The Contractor is responsible for insuring that its personnel and subcontractor personnel, performing work under this Contract, on Laboratory controlled premises, obtain from the JPL Security Group the required badges and passes, if any, authorizing admittance to the premises.

#### **ARTICLE GP-102. OTHER CONTRACTS**

- (a) JPL may undertake or award other contracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other contractors and with JPL employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by JPL. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by JPL employees.
- (b) Where the Contractor's work is associated with that of another contractor, the Contractor shall examine the adjacent work and report in writing to JPL any defect or condition preventing the proper performance of this Contract. If the Contractor proceeds without giving such notice, the Contractor shall be held to have accepted the work or materials and the existing conditions, and shall be responsible for any defects in its own work, and shall not be relieved of the obligation of any warranty because of any such condition or imperfection.

#### **ARTICLE GP-103. PERMITS AND RESPONSIBILITIES**

The Contractor shall, without additional expense to JPL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others, including, but not limited to, the enclosing of the Contractor's work area with adequate barricades and, where appropriate, flashing lights as approved by JPL. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract. The Contractor agrees to indemnify the Institute and the Government against any loss, cost, liability or damage by reason of the Contractor's violation of or failure to comply with any applicable laws, executive orders or regulations.

#### ARTICLE GP-104. SAFETY AND HEALTH

(The following provision shall apply if (i) the Contract amount exceeds \$25,000, or (ii) JPL determines that hazardous materials or operations are involved in the performance of work hereunder, and so advises the Contractor in writing.)

- (a) The Contractor shall take all reasonable safety and health measures in performing under this Contract and shall, to the extent set forth below, submit a safety and health plan for JPL's approval. The Contractor shall comply with (i) all applicable Federal, state and local laws relating to safety and health which are in effect on the date of this Contract and (ii) the safety and health standards, specifications and issuances, reporting requirements, and provisions set forth below.
- (b) The Contractor shall take or cause to be taken such other safety and health measures as JPL may direct. To the extent that the Contractor may be entitled to an equitable adjustment for such measures under the terms and conditions of this Contract, such equitable adjustment shall be determined pursuant to the procedures of the Article of this Contract entitled "Changes;" provided, that no adjustment shall be made under this Article for any change for which an equitable adjustment is expressly provided under any other provision of this Contract.
- (c) The following safety and health standards, specifications, issuances and reporting requirements are prescribed:
  - (1) General Standards and Specifications: The Contractor shall comply with applicable provisions of the Occupational Safety and Health Standards of the Occupational Safety and Health Act of 1970, Rules and Regulations of the Department of Labor issued pursuant thereto and regulations of states provided for under the Act. Within California the Contractor shall comply with applicable provisions of the California Occupational Safety and Health Act of 1973.
  - (2) Environmental Matters: Environmental controls shall be in accordance with applicable NASA and other Federal, State and local regulatory requirements and in accordance with applicable Executive Orders of the President.
  - (3) Any additional safety and health standards, specifications, issuances and reporting requirements set forth in this Contract.
- (d) The safety and health plan to be submitted by the Contractor pursuant to paragraph (a) above shall implement the requirements of this Article and of the standards and specifications of paragraph (c) of this Article and shall describe the means to be employed by the Contractor to monitor and enforce said requirements. The plan shall include the Contractor's standards and criteria for imposing safety and health standards upon its subcontractors of any tier and its plans and procedures for monitoring compliance with such standards.
- (e) The Contractor shall immediately notify and promptly report to JPL any accident, incident or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property (or, if this Contract sets forth any acceptable threshold limits of contamination, any contamination of property beyond those stated limits) beyond any stated acceptable threshold limits set forth in this Contract or property loss of \$25,000 or more arising out of work performed under this Contract; provided, however, the Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the Contractor shall comply with the illness, incident and injury experience reporting requirements set forth below or elsewhere in this Contract. The Contractor will also provide quarterly reports which specify lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses. The Contractor will investigate all work-related incidents or accidents to the extent necessary to determine their cause or causes and furnish JPL with a report, in such form as JPL may require, of the investigative findings and proposed or completed corrective actions. In addition, the Contractor shall comply with the illness, incident and injury experience reporting requirements set forth below or elsewhere in this Contract.
- (f) Illness, Incident and Injury Experience Reports.
  - (1) Reports required by this Article or elsewhere in this Contract shall be furnished in three copies.
  - (2) The following illness, incident, and injury experience reports are prescribed pursuant to paragraph (e) above:

- (A) Investigative Reports: The Contractor shall furnish reports of investigation of individual incidents or accidents in formats approved by JPL, provided, however, that the Contractor shall not be required to furnish personally identifiable information concerning Contractor or subcontractor employees.
- (B) The Contractor shall furnish such other reports as JPL determines to be related to the Contractor's safety and health program and its experiences thereunder.
- (g) (1) JPL may notify the Contractor in writing of any noncompliance with the provisions of this Article and may also specify corrective actions to be taken. The Contractor shall promptly take, and report, any necessary corrective action.
- (2) If the Contractor fails or refuses to institute prompt corrective action in accordance with (g)(1) above, JPL may invoke any stop work or suspension of work provision of this Contract or any other remedy legally available to the Institute in the event of such failure by the Contractor.
- (h) The Contractor (or subcontractor or supplier) shall cause the substance of this Article, including this paragraph (h) and any applicable provisions of this Contract, with any appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which:
  - (1) Amount to \$1,000,000 or more, unless JPL makes a written determination that this is not required;
  - (2) Require construction, repair, or alteration in excess of \$25,000; or
  - (3) Regardless of dollar amount, involve the use of hazardous materials or operations.
- (i) The Contractor agrees that authorized representatives of JPL or the Contracting Officer shall have access to and the right to examine the sites or areas where work under this Contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this Article.
- (j) As part of the Contractor's safety and health plan, the Contractor shall furnish a list of all hazardous operations to be performed, including operations covered by measures indicated in paragraphs (a) and (b) of this Article and a list of other major or key operations required or planned in the performance of the Contract, even though not deemed hazardous by the Contractor. JPL and the Contractor shall jointly decide which operations are to be considered hazardous with JPL as the final authority. Before hazardous operations commence, the Contractor shall develop, review, and provide plans for the operation for JPL to review. The Contractor's review procedure shall include evaluations by operating personnel, management and safety professionals, as appropriate. Lists of personnel trained and certified or specified for each hazardous operation shall be maintained. Such records shall be supplied to JPL on request.

#### **ARTICLE GP-105. SUSPENSION OF WORK**

- (a) JPL may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that JPL determines appropriate for the convenience of JPL or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (i) by an act of JPL in the administration of this Contract, or (ii) by JPL's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
- (c) A claim under this Article shall not be allowed (i) for any costs incurred more than 20 days before the Contractor shall have notified JPL in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.



#### ARTICLE GP-106. INSPECTION OF CONSTRUCTION

- (a) "Work," as used in this Article, includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to JPL. All work shall be conducted under the general direction of JPL and is subject to JPL inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- (c) JPL inspections and tests are for the sole benefit of JPL and do not:
  - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of JPL after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a JPL inspector authorized to change any form or condition of any specification, unless such inspector has been authorized to make such changes in accordance with the Article entitled "Authority of JPL Representatives."
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by JPL. JPL may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. JPL shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Contract.
- (f) The Contractor shall, without charge, replace or correct work found by JPL not to conform to Contract requirements, unless JPL consents to accept the work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, JPL may (i) by Contract or otherwise, replace or correct the work and charge the cost to the Contractor or (ii) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, JPL decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Contract requirements, the Institute shall make an equitable adjustment in the Contract price for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Contract, JPL shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work JPL determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or JPL's rights under any warranty or guarantee.
- (j) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

#### ARTICLE GP-107. WARRANTY OF CONSTRUCTION

- (a) In addition to any other warranties in this Contract, the Contractor warrants, except as provided in paragraph (j) of this Article, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If JPL takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date JPL takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Institute or Government owned or controlled real or personal property, when that damage is the result of:
  - (1) The Contractor's failure to conform to Contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) JPL shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, JPL shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall:
  - (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of JPL or the Government, if directed by JPL; and
  - (3) Enforce all warranties for the benefit of JPL or the Government, if directed by JPL.
- (h) In the event the Contractor's warranty under paragraph (b) of this Article has expired, JPL or the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by JPL nor for the repair of any damage that results from any defect in JPL-furnished material or design.
- (j) This warranty shall not limit JPL's rights under the "Inspection of Construction" Article of this Contract with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment, specified by JPL on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Institute.